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OCA 2028-88

CENTRAL INTELLIGENCE AGENCY

Office of Congressional Affairs
Washington, D.C. 20505
Telephone: [redacted] JUN 1988

STAT

TO: Mr. Nicholas J. Glakas
General Counsel
Committee on Appropriations

STAT

Per our discu [redacted]

Legislation Division
Office of Congressional Affairs

Attachments

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EXECUTIVE OFFICE OF THE PRESIDENT
[illegible] MANAGEMENT AND BUDGET
[illegible] DC [illegible]

JUN 15 1988

The Honorable Robert Dole
United States Senate
Washington, D.C. 20510

Dear Mr. Leader:

The Administration requests that your Committee strike Section 621, relating to national security employee nondisclosure agreements, from H.R. 4775, the Treasury-Postal Service Appropriations Bill for FY 1989.

Section 621 is identical to Section 630 of the FY 1988 Treasury-Postal Service Appropriations Act contained in the FY 1988 further appropriations continuing resolution (P.L. 100-202). The provision purports to forbid the U.S. Government from using appropriated funds to implement or enforce certain agreements with Federal employees that they not disclose without authority classified information to which they gain access during their Federal employment.

On May 27, 1988, in National Federation of Federal Employees v. United States, No. 88-2284-OG, the United States District Court for the District of Columbia held that Section 630 of the FY 1988 Treasury-Postal Service Appropriations Act violates the Constitution. The Court stated:

> "The statute [Sec. 630] impermissibly restricts the President's power to fulfill obligations imposed upon him by his express constitutional powers and the role of the Executive in foreign relations. Section 630 is, therefore, unconstitutional." (slip op., at 38)

Section 621 of H.R. 4775 is both unconstitutional and unwise. The President possesses the constitutional authority to require Federal employees who voluntarily assume positions of high trust bringing access to the Nation's most sensitive secrets to agree to keep those secrets. Such nondisclosure agreements are essential safeguards in protecting the national security.

We urge your Committee to strike Section 621.

Sincerely yours,

James C. Miller III
Director

IDENTICAL LETTERS SENT TO HONORABLE JOHN C. STENNIS, HONORABLE MARK O. HATFIELD, HONORABLE DENNIS DECONCINI, AND HONORABLE PETE DOMENICI

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON D C 20503

The Honorable John C. Stennis
Chairman, Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Administration requests that your Committee strike Section 621, relating to national security employee nondisclosure agreements, from H.R. 4775, the Treasury-Postal Service Appropriations Bill for FY 1989.

Section 621 is identical to Section 630 of the FY 1988 Treasury-Postal Service Appropriations Act contained in the FY 1988 further appropriations continuing resolution (P.L. 100-202). The provision purports to forbid the U.S. Government from using appropriated funds to implement or enforce certain agreements with Federal employees that they not disclose without authority classified information to which they gain access during their Federal employment.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL FEDERATION OF FEDERAL EMPLOYEES, Plaintiff, v. UNITED STATES OF AMERICA, et al., Defendants.	Civil Action No. 87-2284-OG
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, et al., Plaintiffs, v. STEVEN GARFINKEL, et al., Defendants.	Civil Action No. 87-2412-OG
AMERICAN FOREIGN SERVICE ASSOCIATION, et al., Plaintiffs, v. STEVEN GARFINKEL, et al., Defendants.	Civil Action No. 88-0440-OG

FILED

MAY 27 1988

Clerk, U.S. District Court
District of Columbia

COUNSEL: For plaintiffs in C.A. 87-2284: Bruce Heppen, National Federation of Federal Employees, Washington, D.C.

For plaintiffs in C.A. 87-2412: Stuart Kirsch, American Federation of Government Employees, Atlanta, Georgia and Joseph Kennedy, Government Accountability Project, Washington, D.C.

For plaintiffs in C.A. 88-0440: Patti Goldman, Public Citizen Litigation Group, Washington, D.C.

For defendants: Robert Irvin, Department of Justice, Washington, D.C.

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